SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

GLOBAL NEIGHBORHOOD; REFUGEE CONNECTIONS OF SPOKANE; SPOKANE CHINESE ASSOCIATION; ASIAN PACIFIC ISLANDER COALITION - SPOKANE; SPOKANE CHINESE AMERICAN PROGRESSIVES; and the SPOKANE AREA CHAPTER OF THE NATIONAL ORGANIZATION OF WOMEN, Plaintiffs, v. RESPECT WASHINGTON; VICKY DALTON, SPOKANE COUNTY AUDITOR, in her official capacity; and the CITY OF SPOKANE, Defendants.	*No. 17201621-1* Respect Washington's Opposition to Motion for Declaratory Judgment

INTRODUCTION

This lawsuit seeks to prohibit Spokane voters from exercising their right to vote and right to express their views via the ballot box over a matter of City of Spokane policy. The fundamental question on which Spokane voters have a right to be heard is whether the City of Spokane will cooperate with federal authorities for immigration enforcement. On October 20, 2014, the Spokane City Counsel

STEPHENS & KLINGE LLP
10900 NE 8th Street, Suite 1325
Bellevue, WA 98004
(425) 453-6206

enacted ordinance C-35164 creating the former Spokane Municipal Code ("SMC") section 3.40.040, titled "Biased-Free Policing." This provision prohibited the Spokane Police from profiling based upon a number of factors, including "citizenship status." *Id.*

A week later, on October 27, 2014, the Spokane City Council enacted Ordinance C-35167. This ordinance is titled "Immigrant Status Information" and created the former SMC 3.10.050. *Id.* Ordinance C-35167 prohibited city employees from inquiring about the immigration status of any person; prohibited police officers from inquiring about immigration status unless there was a reasonable suspicion the person had been previously deported; and prohibited the police from detaining aliens because of immigration status. *Id.*

On November 26, 2014, Defendant Respect Washington submitted a proposed initiative with the Spokane city clerk. The proposed initiative would repeal Ordinance C-35167 and would amend Ordinance C-35164 to eliminate citizenship status from the list of factors the Spokane police are prohibited from using to profile.

On December 9, 2016, the Spokane County auditor certified that the requisite number of signatures had been submitted for Initiative No. 2015-1. On February 22, 2016, the Spokane City Council placed Initiative No. 2015-1 on the November 7, 2017 ballot where it became Proposition 1. RES 2016-0008. Plaintiffs waited until May 3, 2017 to file their complaint.

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Bellevue, WA 98004
(425) 453-6206

Similarly, they waited until July 27, 2017 to file this motion on the Uniform Declaratory Judgment Act ("UDJA") seeking to block Proposition 1 from appearing on this November's election ballot. In keeping with the Plaintiffs' scheduling, the motion will not be heard until August 25, 2017, on the eve of the printing and mailing of ballots, essentially ensuring that further proceedings, like an appeal, are not available prior to the November 2017 election.

For the reasons the follow, Plaintiffs' motion should be denied.

ARGUMENT

Plaintiffs seek a declaratory judgment to invalidate Proposition 1, alleging that it is moot, Pls. Mem. at 13–17; that it exceeds the initiative power because they claim it is administrative in nature, *id.* at 17–20; that it is in conflict with state law provisions, *id.* at 20–22; that it lacks a sponsor, *id.* at 22–23; and that the petition form contains language to which they object, *id.* at 23–24. This Court lacks jurisdiction over this action because Plaintiffs lack standing to bring it. Furthermore, all of Plaintiffs' claims lack merit.

As the Washington Supreme Court has explained:

> The initiative is the first power reserved by the people in the Washington Constitution. Const. art. 2, § 1(a). Adopted in 1911, the right of initiative is nearly as old as our constitution itself, deeply ingrained in our state's history, and widely revered as a powerful check and balance on the other branches of government. Accordingly, this potent vestige of our progressive era past must be vigilantly protected by our courts.

Coppernoll v. Reed, 155 Wn. 2d 290, 296-97 (2005).

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Bellevue, WA 98004
(425) 453-6206

In light of the call for vigilant protection, the Supreme Court has created extremely narrow circumstances in which a court can review an initiative prior to the election.

> It has been a longstanding rule of our jurisprudence that we refrain from inquiring into the validity of a proposed law, including an initiative or referendum, before it has been enacted. We have recognized two *narrow* exceptions to this general rule against preelection review.

Id. at 297 (emphasis added). Those exceptions are challenges to procedural defects and claims that the initiative's "subject matter is not proper for direct legislation." *Id.*

The Court in *Coppernoll* also recognized that the value of the initiative process is more than just a matter of citizens exercising legislative power. The initiative process involves free speech values.

> Because ballot measures are often used to express popular will and to send a message to elected representatives (regardless of potential subsequent invalidation of the measure), substantive preelection review may also unduly infringe on free speech values. For example, after voter passage of Initiative 695 requiring $30 vehicle license tabs, it was ruled invalid by the trial court. A nearly identical measure was quickly passed by the legislature and signed by the governor before an appeal could be heard.

Id. at 298. While the Court referred to "substantive preelection review" (which is not allowed), the reality is that any action which prohibits the vote infringes on free speech values. For that reason, the Court should be certain that the Plaintiffs have standing and prove the elements of their claim. Any doubt should be resolved in favor of placing the matter on the ballot because claimed illegalities can be resolved after an election and only if the measure is actually approved by the voters.

While the initiative power at the city level does not arise directly from the Washington Constitution, the Washington Supreme Court has recognized the same values local initiatives

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(425) 453-6206

represent and have likewise limited pre-election judicial involvement to these same two narrow exceptions. *City of Port Angeles v. Our Water-Our Choice!,* 170 Wn. 2d 1 (2010).

I.
PLAINTIFFS LACK STANDING FOR THE DECLARATORY JUDGMENT THEY SEEK.

In order to have standing to seek declaratory judgment under the UDJA, a person must present a justiciable controversy:

> (1) which is an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

Diversified Indus. Dev. Corp. v. Ripley, 82 Wn. 2d 811, 815 (1973). "Inherent in these four requirements are the traditional limiting doctrines of standing, mootness, and ripeness, as well as the federal case-or-controversy requirement." *To-Ro Trade Shows v. Collins*, 144 Wn. 2d 403, 411 (2001). "To have standing, [for a declaratory judgment] a party must (1) be within the zone of interest protected by a statute and (2) suffered an injury in fact, economic or otherwise." *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn. 2d 173, 186 (2007). A party seeking a declaratory judgment "bears the burden of establishing standing." *Allan v. Univ. of Wash.*, 92 Wn. App. 31, 35 (1998).

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Bellevue, WA 98004
(425) 453-6206

A. Plaintiffs offer no evidence that they have association standing to represent members who are injured.

"The standing doctrine prohibits a litigant from raising another's legal rights." *Walker v. Munro*, 124 Wn. 2d 402, 419 (1994). That is precisely what Plaintiffs seek to do here. Pls. Mem. at 10–11. Plaintiffs' memorandum of law implicitly asserts third party standing by making claims of injuries to others rather than to the Plaintiff organizations themselves. Pls. Mem. at 10–11. Washington courts follow the organization standing rules established in federal environmental jurisprudence. *Save a Valuable Env't (SAVE) v. Bothell*, 89 Wn. 2d 862, 868 (1978).

> An association has standing to bring suit on behalf of its members when the following criteria are satisfied: (1) the members of the organization would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither claim asserted nor relief requested requires the participation of the organization's individual members.

Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports, 146 Wn. 2d 207, 213–14 (2002). Association standing requires "plaintiff-organizations to make specific allegations establishing that at least one *identified member* had suffered or would suffer harm." *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009) (emphasis added). An "organization's self-description of the activities of its members" does not establish standing. *Id.* at 497.

Here, Plaintiffs have not identified any members who would have standing in their own right. Pls Mem. at 10–11. Without such a showing they cannot

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establish standing. *Summers*, 555 U.S. at 498; *see also Riverview Cmty. Grp. v. Spencer & Livingston*, 181 Wn. 2d 888, 894 (2014) (organization had standing where five members submitted declarations); *Des Moines Marina Ass'n v. City of Des Moines*, 124 Wn. App. 282, 291–92 (2004) (complaint dismissed when plaintiff could not identify injured members). Standing is more than just a pleading requirement. *To-Ro Trade Shows v. Collins,* 144 Wn.2d 403, 417 (2001) (plaintiff must prove standing). If not, anyone could be a plaintiff, allege any injury and render standing a sure thing.

Here, the only plaintiff to even claim it has members with standing is the National Organization for Women. Jones Decl. ¶ 6. But while associational standing requires at least one member with standing, it also requires proof that the issue is germane to the organization's primary purpose. *American Legion Post #149 v. Washington State Dept. of Health,* 164 Wn. 2d 570, 596 (2008) (organization did not have standing to challenge indoor smoking rules because the American Legion Post's primary purpose did not relate to smoking). Here, the Jones Declaration fails to prove that the challenge to Proposition 1 is germane to the primary purpose of the National Organization for Women.

B. Plaintiffs' speculative, abstract claims of injury to third parties do not established an injury in fact resulting from Proposition 1.

Even assuming Plaintiffs could represent unidentified third parties, they still must show an injury in fact to establish standing. *Nelson,* 160 Wn.2d at 186. "Washington courts interpret the injury-in-fact test consistently with federal case law." *Snohomish Cty. Pub. Transp. Benefit Area v. Pub. Emp't Relations Comm'n,*

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173 Wn. App. 504, 513 (2013)). The definition of an injury in fact is well established:

> First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly trace[able] to the challenged action of the defendant, and not th[e] result [of] the independent action of some third party not before the court."

Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992) (internal quotations and citation omitted); *see also Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn. 2d 791, 802 (2004) (stating the causation requirement).

If approved by the citizens, Proposition 1 would "remove from the Spokane Municipal Code words added by the ordinances which prohibit city employees from acquiring or ascertaining immigration status information in the course of their lawful duties." Proposition 1. That would have the following effects: (1) city employees could inquire of the immigration status of an individual; and (2) police officers could arrest, or detain an individual solely based upon immigration status. *See* SMC 18.07.020 & 18.07.0101.

Plaintiffs offer a chain of speculative injuries, where one injury depends upon the injury before it, that they attribute to Proposition 1. Pls. Mem. at 10–11. To start the chain, Plaintiffs claim, "Proposition 1 will subject those we serve to additional stops by Spokane Police officers solely on the basis of the person's appearance, accent, or mannerisms." Abdul-Fields Decl. ¶ 10; *see also* Hendricks Decl. ¶ 9 Jones Decl. ¶ 14. Plaintiffs offer no evidence in support of its claims that

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such stops by the police are "actual or imminent;" they simply say it will happen. Pls. Mem. at 10–11. This injury claim is entirely "conjectural" and not an injury in fact. *See Lujan*, 504 U.S. at 860.

In addition, this first claim of injury lacks traceability between the action (Proposition 1) and the injury (police stops). *Lujan*, 504 U.S. at 560. Proposition 1 does not govern stops based solely on the basis of appearance, accent or mannerisms. The Spokane Police could stop someone solely based upon appearance, accent, or mannerisms with or without the adoption of Proposition 1. This claim of injury from increased police stops simply is not traceable to the Proposition 1. *See Lujan*, 504 U.S. at 560. Consequently, Plaintiffs' injury claim is not an injury in fact. In event that Proposition 1 is enacted, the police would still be prohibited from policing based upon, "any characteristic of protected classes under federal, state or local laws as the determinative factor initiating law enforcement action against an individual." SMC 3.10.040. Plaintiffs cannot point to any legally protected interest they would be deprived of by the enactment of Proposition 1. Pls. Mem. at 10–11.

From there, Plaintiffs offer additional injuries that depend on their first conjectural injury. The next injury claim is that, "Increased contact with law enforcement based solely on immigration status degrades these efforts and will significantly increase fear and refugees to contact police or seek protection from the legal system." Abdul-Fields Decl. ¶ 12; *see also* Hendricks Decl. ¶ 10; Jones Decl. ¶ 9. Again, Plaintiffs offer no evidence that Proposition 1 will increase

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contacts with law enforcement. Pls. Mem. at 10–11. They simply make conjectural claims that it will happen as a result of their first conjectural injury claim. Pls. Mem. at 10–11.

This claim of injury suffers from an additional problem: an injury in fact is "an invasion of a legally protected interest." *Lujan*, 504 U.S. at 560 (quotation omitted). Plaintiffs make no showing that there is a legally protected interest in not having contact with law enforcement or a legally protected interest not fearing law enforcement. Pls. Mem. at 10–11.

Plaintiffs continue to stretch the chain of causation with the claim that "those we serve will be more likely to be victims of crime...." Abdul-Fields Decl. ¶ 13; *see also* Jones Decl. ¶ 9. Yet Proposition 1, does not govern criminals; it governs the authority of the police and city officials. Proposition 1. This claimed injury of increased crime requires the "independent action of some third party" (*i.e.*, criminals) and, therefore, is not an injury-in-fact. *See Lujan*, 504 U.S. at 560. Plaintiffs finish that sentence with an additional injury, "[Refugees will] not report a crime." Abdul-Fields Decl. at ¶ 13; *see also* Hendricks Decl. at ¶ 10; Jones Decl. ¶ 8. The choice of whether or not to call the police is entirely up to the unknown individuals Plaintiffs claim to represent. If those individuals choose not to call the police to report a crime, then that claimed injury is entirely self-inflicted. One "cannot obtain standing to sue in its own right as a result of self-inflicted injuries, *i.e.*, those that are not 'fairly traceable to the actions of the defendant.'" *Ass'n of Cmty. Orgs. for Reform Now v. Fowler*, 178 F.3d 350, 358

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(5th Cir. 1999); *accord Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 415–18 (2013).

Finally, plaintiffs claim, "Greater fear of law enforcement impacts the ability of a refugee to adapt to our community in a healthy manner, which in turn can impact employment, education, and family life." Hendricks Decl. ¶ 11. In addition to the increasing tenuous chain of causation linking this injury to Proposition 1, Plaintiffs offer no evidence that the ability to adapt to one's community in a healthy manner is a legally protected interest required for an injury in fact. *See Lujan*, 504 U.S. at 560.

Even if one were to assume that the organization plaintiffs could show they represent specific, unknown individuals within the class they claim to represent, they still have not shown an injury in fact to those individuals caused by Proposition 1.

Finally, it is important to recognize the relief sought in this case when juxtaposed the claim of injury. Plaintiffs seek to stop the exercise of legislative power at the local level because the initiative process is a legislative process for enacting a new City ordinance. *Maleng v. King County Corrections Guild*, 150 Wn. 2d 325 (2003). If political opponents to the proposed legislature could simply claim an injury from a potential state statute or city ordinance to give standing to prohibit a vote on the proposal, legislative process in Washington could quickly come to a halt. Unless there is a real, as opposed to abstract injury,

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(425) 453-6206

the Court should be unwilling to step in to prevent a vote on a proposed piece of legislation.

C. The Public Importance exception to standing does not apply because Proposition 1 does not immediately affect substantial segments of the population and does not have a direct bearing on commerce, finance, labor, or agriculture.

The State of Washington recognizes a public importance exception to standing:

> Where a controversy is of serious public importance and immediately affects substantial segments of the population and its outcome will have a direct bearing on the commerce, finance, labor, industry or agriculture generally, questions of standing to maintain an action should be given less rigid and more liberal answer.

Wash. Nat. Gas Co. v. Pub. Util. Dist., 77 Wn. 2d 94, 96 (1969). Plaintiffs claim this exception applies to them. Pls. Mem. at 11–12. Plaintiffs' argument here suffers from a failure to quote the entire rule for the public importance exception. *Id.* They simply declare their claim to be on of "significant public importance." *Id.* at 12. That, of course, could be said about any initiative or proposal before other legislative bodies. Yet the public interest exception requires an issue that has an "immediate" effect on "substantial segments of the population," *Wash. Nat. Gas Co.*, 77 Wn. 2d at 96, a showing that they have not made. *See* Pls. Mem 11–12. Plaintiffs also give no explanation how Proposition 1 has a "direct bearing on the commerce, finance, labor, industry or agriculture." *Id. All legislation affects someone. This "exception" must require more than the fact that someone might be affected if the measure is adopted.*

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Plaintiffs have not offered any evidence that Proposition 1 will *immediately* affect substantial segments of the population. *Id.* "Immediately" is important because issues or harm from the effect of an initiative can be judicially determined after an election, if the measure is adopted. Instead, Plaintiffs seek to have the Court apply a different standard for liberal standing: "an issue of significant public concern." Pls. Mem. at 12. A ballot initiative always requires the signatures of significant percentage of the voters to reach the ballot, so any initiative reaching the signature threshold represents an issue of significant public concern. To adopt Plaintiffs new standard for liberal standing would eliminate the standing requirement entirely to challenge voter initiatives; the "exception" would simply swallow the rule.

II.
A RECODIFICATION OF THE MUNICIPAL CODE DOES NOT MOOT PROPOSITION 1

Plaintiffs observe the sections of Spokane Municipal Code that Proposition 1 amends has been recodified so that the provisions specified by the proposition have now been moved to different locations in the code. Pls. Mem. at 13–14. Plaintiffs then declare Proposition 1 to be moot because the provisions it affects have moved to new provisions in the City code. Pls. Mem. at 14.

A. Plaintiffs lack standing to challenge the mootness of Proposition 1 because they have no injury if Proposition 1 is moot.

A Plaintiff must "demonstrate standing for each claim he seeks to press" and "each form of relief sought." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 335 (2006). If Proposition 1 be moot, then it would have no effect. *Cf. Yakima v.*

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Huza, 67 Wn. 2d 351, 358 (1965). In that case, Proposition 1 could not possibly cause Plaintiffs any of the injuries they recite if it were enacted. *See* Pls. Mem. at 8–9. Because all of Plaintiffs alleged injuries depend upon Proposition 1 having an "actual or imminent" effect, they have made no showing that they have standing to challenge Proposition 1 as being moot.

B. Mootness is not a basis for pre-election review of an initiative

As stated above, there are only two narrow grounds for judicial review of an initiative prior to the election, often referred to as "pre-election review." Those grounds are failure to comply with procedural requirements, such sufficiency of signatures on a petition, and whether the initiative is beyond the scope of the initiative power. The judicial doctrine of mootness which limits the exercise of judicial power is simply not one of them. Again, a citizen cannot invoke the power of the Courts to prohibit a vote on a legislative proposal on the assertion that the proposal is moot.

While it does not appear that anyone has tried to stop a vote on an initiative based on mootness before, *Coppernoll* is instructive. There, the challengers to the initiative were claiming that the initiative was unconstitutional. 155 Wn.2d at 295. In essence, they tried to shoehorn their unconstitutionality argument into the limited scope of review by claiming initiatives that are unconstitutional are beyond the scope of the initiative power. The Supreme Court rejected the argument, finding that the question as to

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whether an initiative was unconstitutional was not appropriate for pre-election review. *Id.* at 305.

Because questions as to the very constitutionality of a measure can and must wait until after the election, and if only the initiative is adopted, mootness, a doctrine purely about judicial restraint, can and should as well.

C. The text of the provisions amended by Proposition 1 still exists even after recodification of the Municipal Code.

Plaintiffs raise no issue of statutory interpretation that would arise as a result of the municipal code recodification if Proposition were enacted. Pls. Mem. at 13–17. They simply make the conclusory claim, "Even if this Court were to allow a consideration of the 'initiative intent,' the initiative language would be rendered meaningless because of subsequent amendments." Pls. Mem. at 17. In reality, the subsequent changes to the Spokane Municipal Code present no difficulties for interpreting Proposition 1 at all.

Proposition 1 states it would amend SMC 3.10.040 as follows:

> C. Bias-based profiling is defined as an "act of a member of the Spokane Police Department or a law enforcement officer commissioned by the Spokane Police Department that relies on actual or perceived race, national origin, color, creed, age,((~~citizenship status,~~)) gender, sexual orientation, gender identity, disability, socio-economic status, or housing status or any characteristic of protected classes under federal, state or local laws as the determinative factor initiating law enforcement action against an individual, rather than an individual's behavior or other information or circumstances that links a person or persons to suspected unlawful activity."

Id.

That text is now codified at SMC 18.01.030 and provides:

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> U. "Profiling" means actions of the Spokane Police Department, its members, or officers commissioned by the Spokane Police Department to rely on actual or perceived race, religion, national origin, color, creed, age, *citizenship status*, immigration status, refugee status, gender, sexual orientation, gender identity, disability, socio-economic status, housing status, or membership in any protected class under federal, state or local law as the determinative factor in initiating law enforcement action against an individual, rather than an individual's behavior or other information or circumstances that links a person or persons to suspected unlawful activity.

Id. (emphasis added). Clearly the amendment called for by Proposition 1, can be applied to the new text by deleting the text emphasized above.

It should be pointed out that this provision is a dead reference in the code. SMC 18.07.0101, provides, "The Spokane Police Department, its officers, employees, and all officers commissioned under the Spokane Police Department are prohibited from engaging in profiling as the term is defined in at SMC 18.01.030(T)." Yet, the definition of "profiling" is actually at located 18.01.030(U)." If the effect of recodification is as rigid as Plaintiffs suggest, then the Spokane City Council repealed the Bias Free Policing provision by having it refer to the wrong section in Ordinance C35485.

But of course, statutory problems such as these are commonplace and Courts apply common law canons of statutory construction to resolve them. *E.g.*, *State v. Pittman*, 185 Wn. App. 614, 621 (2015). When the citizenry legislates through initiative, "a court may determine the voters' intent by applying canons of statutory construction or by 'examining the statements in the voters pamphlet.'" *Pierce Cty. v. State*, 150 Wn. 2d 422, 430 (2003) (quoting

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Amalgamated Transit v. State, 142 Wn. 2d 183, 205–06 (2000)). Furthermore, "statutes are to be construed to 'facilitate,' rather than frustrate, the right of initiative." *Coppernoll*, 155 Wn. 2d at 297 n.4.

The other amendment contained in Proposition 1 is:

> ((~~3.10.050 Immigrant Status Information~~
> ~~A. Unless required by law or court order, no Spokane City officer or employee shall inquire into the immigration status of any person, or engage in activities designed to ascertain the immigration status of any person.~~
> ~~B. Spokane Police Department officers shall have reasonable suspicion to believe a person has been previously deported from the United States, is again present in the United States, and is committed or has committed a felony criminal law violation before inquiring into the immigration status of an individual.~~
> ~~C. The Spokane Police Department shall not investigate, arrest, or detain an individual based solely on immigration status.~~
> ~~D. The Spokane Police Department shall maintain policies consistent with this section.~~))

The relevant section has been recodified to provide:

> *Section 18.07.020 Immigration Status Information*
> *A. Unless required by law or court order, no officer, agent, or employee of the City of Spokane shall inquire into the immigration or citizenship status of any person, or engage in activities designed to ascertain the immigration status of any person.*
> *B. Spokane Police officers may not inquire into the immigration or citizenship status of an individual unless they have reasonable suspicion to believe a person: (i) has been previously deported from the United States, (ii) is again present in the United States, and (iii) is committing or has committed a felony criminal law violation.*
> *C. The Spokane Police Department shall not investigate, arrest, or detain an individual based solely on immigration or citizenship status.*
> *D. The Spokane Police Department shall maintain policies consistent with this section.*

SMC 18.07.020 (emphasis added). Once again, the amendments of Proposition 1 can be unambiguously applied to the new section. These two changes to the

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Spokane Municipal Code at issue present no problem for giving full effect to Proposition 1. Plaintiffs' claim that Proposition 1 is moot defies common law statutory construction.

III.
PROPOSITION 1 IS WITHIN THE INITIATIVE POWER BECAUSE IT IS A LEGISLATIVE MEASURE THAT PRESCRIBES A NEW POLICY

Plaintiffs assert that Proposition 1 exceeds the initiative power because it is administrative in nature. Pls. Mem. at 18–20. Local administrative matters are not subject to initiative. *City of Port Angeles v. Our Water-Our Choice!*, 170 Wn. 2d at 8. "Generally speaking, a local government action is administrative if it furthers (or hinders) a plan the local government or some power superior to it has previously adopted." *Our Water-Our Choice!*, 170 Wn. 2d at 10. "The power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself, or some power superior to it." *Our Water-Our Choice*, 170 Wn. 2d at 11 (quoting *Durocher v. King Cty.*, 80 Wn. 2d 139, 153 (1972)).

> Discerning whether a proposed initiative is administrative or legislative in nature can be difficult. Justice Brachtenbach suggested that at least for the case before the court at the time, the appropriate question was "whether the proposition is one to make new law or declare a new policy, or merely to carry out and execute law or policy already in existence." *Ruano* [*v. Spellman*], 81 Wn. 2d

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> [820,] 823 [1973], 505 P.2d 447 (citing *People v. City of Centralia,* 1 Ill.App.2d 228, 117 N.E.2d 410 (1953)).

Our Water-Our Choice!, 170 Wn.2d at 10. Here, it is quite clear that Proposition 1seeks to make a new City law and thus to declare a new City policy.

In discussing *Ruano*, the Court in *Our Water-Our Choice!,* noted that the bonds for building the stadium had been authorized as an unchallenged legislative decision, but the initiative related to the implementation of the decision, namely, the construction of the stadium. *Ruano*, 81 Wn.2d at 824-25. Selecting a contractor, the exact price of construction and terms of payment were administrative decisions implementing the legislative policy to build the stadium. *Id.* Here, the initiative's proposal about police policy is just as much a legislative decision as is the decisions on the same subject made by the City Council, decisions which were not made by a City administrator, but only by the adoption of an ordinance—an inherently legislative act.

Proposition 1 is legislative because it would establish a new policy for the City of Spokane. *See City of Port Angeles*, 170 Wn. 2d at 11. The Spokane City counsel amended the municipal code in 2014 to prohibit city employees from inquiring about immigration status. Spokane Ordinance C-35169. Proposition 1 would reverse that policy and puts in place a new policy making it a legislative initiative. *See City of Port Angeles*, 170 Wn.2d at 11.

Plaintiffs identify the same facts but fail to apply the relevant law. Pls. Mem. at 20. They argue, "Proposition 1 seeks to repeal these administrative policies. By definition this is administrative—how do we police—not legislative."

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Id. In fact, such a repeal of a policy is, by definition, legislative. *See City of Port Angeles*, 170 Wn.2d at 11.

IV.

PROPOSITION 1 IS CONSISTENT WITH RULES OF PROFESSIONAL CONDUCT AND STATE LAWS

Plaintiffs argue that Proposition 1 is inconsistent with rules of professional conduct and state laws that prohibit the disclosure of immigration status information. Pls. Mem. at 20–21. Plaintiffs cite *Seattle Building & Construction Trades Council v. City of Seattle,* 94 Wn.2d 740 (1980) for the notion that a local initiative cannot violate state law. *Id.* at 747. The facts of Seattle Building & Construction Trades are important. There, the initiative sought to prohibit ongoing plans to build the I-90 bridge over Lake Washington. Essentially, the Court concluded that, because the City had no power to stop the Department of Transportation's plans, neither could City voters. *Id.* at 748.

The flaw in Plaintiffs' argument here is three-fold. First, Proposition 1 does not involve a decision which has been withheld from the City of Spokane by the state. The state legislature has not spoken on this issue as it did with an interstate highway. Second, Proposition 1 does not *require* the disclosure of immigration information that arguably violates state laws. It would simply remove the City of Spokane's own prohibition on city employees inquiring or gathering such information. Proposition 1. Any state or federal law governing immigration status information would be unaffected.

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Third, inconsistency with state law as a basis for pre-election judicial review is not as broad as Plaintiffs need to sustain their argument. Claims that an initiative is unconstitutional must wait until a vote of the people is held. *Coppernoll,* 155 Wn.2d at 305. Therefore, inconsistency with the ultimate state law is not sufficient. Rather, the inconsistency with state law must relate to the subject matter and whether the subject matter is within the scope of the initiative power. *See Philadelphia II v. Gregoire,* 128 Wn.2d 707 (1996) (initiative seeking to establish federal law was beyond the scope of the initiative power); *Priorities First v. City of Spokane*, 93 Wn.App. 406 (1998) (state legislature specifically gave subject matter to the city council and not to the voters).

The subject matter of Proposition 1 is not beyond the scope of the City's legislative power or the initiative power. All other arguments about legality must wait until after the election.

V.

PROPOSITION 1 CONFORMS TO THE PROCEDURAL REQUIREMENTS OF THE SPOKANE MUNICIPAL CODE

Plaintiffs raise two procedural objections to Proposition 1. Pls. Mem. at 22–24. First, they claim that Proposition 1 lacks a sponsor. Pls. Mem. at 22–23. Second, they assert that that "The Petition Form contains Argumentative and Prejudicial Language." Pls. Mem. at 23–24. Both of these objections are meritless.

A. Proposition 1 had a sponsor at the relevant time period when it was submitted as required by the Municipal Code.

Plaintiffs argue that Proposition 1 is procedurally defective because its sponsor withdrew "prior to the validation of signatures." Pls. Mem. at 22. In

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(425) 453-6206

support, Plaintiffs quote the Spokane Municipal Code that states, "The resident or political committee representative sponsoring the proposed measure shall provide a notarized statement with appropriate supporting documentation to the city clerk at the *time the measure is filed* verifying that the requirements of this section have been met." SMC 2.02.020 (emphasis added). Plaintiffs further cite SMC 02.02.030(B) that requires the "proposed measure must contain" the contact information for the petitioner. Pls. Mem. at 23. Similarly, Municipal Code § 02.02.030 governs the "Filing of Initiative Measure."

Plaintiff's arguments here suffer from bad timing. Proposition 1 was filed on November 26, 2014. Plaintiffs make no allegations that the filing of the petition was defective at that time. Pls. Mem. at 23–23. Instead, they assert that after-the-fact events invalidate the filing that had already taken place. Pls. Mem. at 23. Plaintiffs' alleged withdrawal of sponsorship occurred over a year later on December 8, 2015. Pls. Mem. at 23. Cleary, Proposition 1 had a sponsor at the time Proposition 1 *was filed*, as required by the Spokane Municipal Code. Plaintiffs cite no law in support of their claim that subsequent events can invalidate a proper filing that has already taken place. *Id.*

Furthermore, the Spokane Municipal Code has no provisions that authorize a petition sponsorship to withdraw. By analogy, a citizen may revoke a signature up until the time the petition is file. SMC 02.02.055. However, there is "no right to permit withdrawals after petitions are received, examined and preliminarily filed." *State ex rel. Harris v. Hinkle*, 130 Wash. 419, 435 (1924).

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The Legal Memorandum of Michael J. Piccolo, Assistant City Attorney, to the City Council dated February 17, 2016, attached the Keller Decl. at Exhibit 1, deals with the issue of an initiative sponsor purporting to withdraw after petitions with sufficient signatures have been submitted. His conclusion based on *State ex rel Hindley v. Superior Court of Spokane*, 70 Wash. 352 (1912) is correct.

The Plaintiffs argument unconscionably would authorize the perpetration of a fraud on voters. The thousands of people who signed the petition expected that the petition gatherers would submit their signatures so that they could be counted in the effort to have this matter placed on the ballot. To allow a "sponsor" to withdraw at the last minute and make that unilateral fact a reason to invalidate the signatures of thousands is simply wrong.

B. The concise description and text of Proposition 1 conforms to the requirements of the Spokane Municipal Code.

Under Spokane Municipal Code 02.02.030, "the city attorney prepares ... a concise description of the measure, which must be a true and impartial description of the measure's essential contents...." The city attorney prepared such a concise summary and it was included in Council Resolution 2016-0008.

Plaintiffs argue, "[t]he *Petition Form* contains Argumentative and Prejudicial Language." Pls. Mem. at 23 (emphasis added). They claim Proposition 1 "violates the requires [sic] of the Spokane Municipal Code, specifically SMC 2.02.060(D)(5) that states, 'The *concise description* must be a true and impartial

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(425) 453-6206

description of the measure's contents ...."[1] Pls. Mem at 23 (emphasis added). In support of this argument, Plaintiffs raise various objections to the Proposition 1 *petition language*. Pls. Mem. at 23–24.

The fundamental flaw in Plaintiffs' argument is obvious: They apply the requirements of the city attorney's concise summary of the measure to the signature petition. There is no legal authority to suggest that the City Attorney's duty to be impartial when writing a summary applies to the text of the initiative. Plaintiffs do not challenge the summary itself, which includes none of the language plaintiffs describe. Pls. Mem. at 23–24.

Given there is no requirement that initiative petitions use only impartial language Plaintiffs can cite no provision governing a signature petition that Proposition 1 has actually violated. Pls. Mem. at 23–24. Plaintiffs ignore the fact that "A preface or preamble stating the motives and inducement to the making of [the law] ... is without force in a legislative sense. It is no part of the law." *Pierce Cty. v. State*, 150 Wn. 2d 422, 434 (2003) (quoting *State ex rel. Berry v. Superior Court for Thurston County*, 92 Wash. 16, 30–32 (1916)). The descriptive sections of the petition to which Plaintiffs raise objection are "policy fluff" that are not legally operative. *See Id.* It is beyond question that initiative petitions commonly include language which is essentially campaigning or advertising. *See* Exhibit 2 at to Keller Decl and example on the last page. No law is violated by that practice.

[1] The current provision is SMC 02.02.030(D).

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10900 NE 8th Street, Suite 1325
Bellevue, WA 98004
(425) 453-6206

VI.

THE DOCTRINE OF LACHES BARS PLAINTIFFS' MOTION.

Plaintiffs have unreasonably delayed bringing this motion and it should be barred by laches.

> (1) knowledge or reasonable opportunity to discover on the part of a potential plaintiff that he has a cause of action against a defendant; (2) an unreasonable delay by the plaintiff in commencing that cause of action; and (3) damage to the defendant resulting from the unreasonable delay.

King Cty. v. Taxpayers of King Cty., 133 Wash. 2d 584, 642 (1997). The Spokane City Council placed Proposition 1 on the ballot on **February 22, 2016.** Plaintiff's exhibits show that it was widely known in the winter of 2016 that Proposition 1 would be on the 2017 ballot. Eichstaedt Decl. Exs. J & K. Plaintiffs strategically delayed over a year after Proposition 1 was placed on the ballot to make their motion heard shortly before the deadline for preparing ballots.

Respect Washington, and ultimately the voters of Spokane, are damaged because this delay ensures that no adverse decision by the court can go through appellate review. Plaintiffs' delay could force them to wait until the next election cycle for Proposition 1 to be placed on the ballot again. Laches applies because Plaintiffs' knowledge about suing has existed for over a year, the delay is completely unreasonable and Respect Washington and the voterswill suffer damage if the relief Plaintiffs' seek is granted at this late hour. *See* Keller Decl. Laches is precisely designed to bar this type of manipulation of the calendar.

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10900 NE 8th Street, Suite 1325
Bellevue, WA 98004
(425) 453-6206

CONCLUSION

Plaintiffs' motion suffers from the severe jurisdictional defect that it does not identify a single member who would suffer an injury in fact by Proposition 1. None of Plaintiffs' claimed injuries qualify as an injury in fact even if they could identify a member who suffers them. If, as Plaintiffs' argue, Proposition 1 is moot, it could not possibly cause any of the injuries Plaintiffs claim. As such they cannot have standing to raise mootness. Likewise, Plaintiffs' arguments of procedural defects and that Proposition 1 is administrative in nature lack merit. Therefore, their motion should be denied.

RESPECTFULLY submitted this 14th day of August, 2017,

STEPHENS & KLINGE LLP

By: _____
Richard M. Stephens, WSBA #21776
Attorney for Defendant Respect Washington

STEPHENS & KLINGE LLP
10900 NE 8th Street, Suite 1325
Bellevue, WA 98004
(425) 453-6206

DECLARATION OF SERVICE

I, Jill E. Stephens, declare:

I am not a party in this action. I reside in the State of Washington and am employed by Stephens & Klinge LLP in Bellevue, Washington.

On August 14, 2017, I caused a true copy of the foregoing pleading to be served on the following persons via the following means:

Rick Eichstaedt Center for Justice 35 West Main, Suite 300 Spokane, WA 99201	☐ Hand Delivery via Legal Messenger ☐ First Class U.S. Mail ☐ Federal Express Overnight ☒ E-Mail: ricke@cforjustice.org ☐ Other _____
Nathaniel Odle Assistant City Attorney Office of the City Attorney 808 W Spokane Falls Blvd Spokane, WA 99201	☐ Hand Delivery via Legal Messenger ☐ First Class U.S. Mail ☐ Federal Express Overnight ☐ Other _____ ☒ E-Mail: nodle@spokanecity.org
Dan Catt Prosecuting Attorney's Office W 1115 Broadway Avenue Spokane, WA 99260	☐ Hand Delivery via Legal Messenger ☐ First Class U.S. Mail ☐ Federal Express Overnight ☐ Other _____ ☒ E-Mail: DCatt@spokanecounty.org

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

STEPHENS & KLINGE LLP
10900 NE 8th Street, Suite 1325
Bellevue, WA 98004
(425) 453-6206

Executed this 14th day of August, 2017, at Bellevue, Washington.

Jill E. Stephens

Paralegal

STEPHENS & KLINGE LLP
10900 NE 8th Street, Suite 1325
Bellevue, WA 98004
(425) 453-6206